

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARVIN M. CAMPBELL,
Movant,

v.

UNITED STATES OF AMERICA,
Respondent.

No. C 11-0073 CW
CR 09-0640 CW

ORDER GRANTING
CERTIFICATE OF
APPEALABILITY
(Docket No. 122)

Movant Marvin Campbell filed a motion pursuant to 28 U.S.C. § 2255 to vacate, set aside or correct his sentence. On April 7, 2014, the Court entered an order denying the § 2255 motion. Movant seeks a certificate of appealability regarding the denial of his motion.

Movant's right to appeal the Court's denial of his § 2255 motion is governed by 28 U.S.C. § 2253(c), which states,

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from--

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C. § 2253(c)(1)-(3). The Ninth Circuit has interpreted the phrase "circuit justice or judge" to include district court

1 judges. United States v. Asrar, 116 F.3d 1268, 1269-70 (9th Cir.
2 1997). A certificate of appealability should be granted "only if
3 the applicant has made a substantial showing of the denial of a
4 constitutional right." 28 U.S.C. § 2253(c)(2).

5 The Court finds that Movant has made a sufficient showing of
6 the denial of a constitutional right on his ineffective assistance
7 of counsel claim based on counsel advising Movant not to file a
8 motion to suppress and, instead, advising him to enter a guilty
9 plea. Accordingly, the application for a certificate of
10 appealability is GRANTED (Docket No. 122).

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12 IT IS SO ORDERED.

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14 Dated: 5/30/2014

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16 CLAUDIA WILKEN
17 United States District Judge
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